IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13405 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHUDASAMA HARUBHA JORUBHA

Versus

STATE OF GUJARAT

Appearance:

MR JA ADESHRA for Petitioner No. 1

Mr.Joshi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/07/2001

ORAL JUDGEMENT

1. Rule. Mr.Joshi, learned AGP, waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for hearing today.

2. The petitioner was appointed as an Armed Police Constable on 12.5.1961. Thereafter, he was promoted as Head Constable Grade II on 26.11.1977 and subsequently, he was promoted as Head Constable Grade I on 1.9.1986. Ultimately, he retired from service as Head Constable

Grade I on 31.10.2000.

3. That on 30.8.1993, the petitioner and one Mr.Anwarkhan Akbarkhan, who was also an Armed Police Constable, were deputed to take one convict, named Chandu Talshi Nayak, from Bhavnagar Central Jail to produce him in Dholka Court in connection with the criminal case against the said convict. While returning from the Court at Dholka to Bhavnagar by S.T. Bus, the said convict, taking advantage of darkness, escaped from the custody of the petitioner and the other constable, viz., Anwarkhan Akbarkhan. In view of the aforesaid incident, the petitioner as well as the said armed Police Constable Anwarkhan Akbarkhan were served with the charge-sheet on the ground that they were negligent in discharging their duties, and ultimately, by an order dated 30.6.1997, punishment was imposed upon the petitioner, reducing the pay of the petitioner from Rs.1,640/- to Rs.1,530/- by stopping three increments with future effect.

4. Against the aforesaid order of the Disciplinary Authority, the petitioner as well as the said Anwarkhan Akbarkhan preferred appeals before the Deputy Inspector General of Police. The appeal of the petitioner was dismissed and similarly, the appeal of the said Anwarkhan Akbarkhan was also dismissed by the appellate authority. Since the petitioner was approaching his superannuation, he did not take immediate steps to challenge his punishment order. However, the other constable Anwarkhan Akbarkhan, ultimately challenged the action of the Disciplinary Authority as well as the Appellate Authority by filing a writ petition, being Special Civil Application No.2849 of 1998. This Court, by its order dated 6.3.1999, allowed the said Special Civil Application on the ground that as per the provisions of Rule 55(1) of the B.C.S.R., if a Government servant is reduced, as a measure of penalty, to a lower stage in his time scale, the Authority has to state the period for which it shall be effective and whether on restoration, it shall operate to postpone future increments, and if so, to what extent. Respondent No.3 was, therefore, directed to reconsider the impugned order of penalty imposed upon the said Anwarkhan Akbarkhan and to specify the period for which the reduction to a lower stage in his time scale imposed upon him shall remain effective. It was stated that the modified order shall be binding on the petitioner therein (Anwarkhan Akbarkhan).

5. After the aforesaid order of this Court, respondent No.3, by his order dated 23.6.2000, decided that the penalty imposed on the said Anwarkhan Akbarkhan

will be effective upto two years with effect from 1.6.1997. It is also stated in the order that the said employee will not be entitled to arrears between 1.6.1997 and 1.5.1999 and he will be entitled to the benefit of increments from 1.6.1999. Since the case of the present petitioner is also similar, ultimately, having come to know about the said order, he has also filed this petition, challenging the order of the appellate authority on the same ground on which said Anwarkhan Akbarkhan filed petition before this Court.

6. Mr.J.A. Adeshra, learned Advocate for the petitioner, argued that since the incident was common and since there was a joint enquiry, the present petitioner is entitled to have similar reduction in penalty and in his case also, the period during which the increments are required to be withheld is required to be specified and he should be given the same treatment which was given to Anwarkhan Akbarkhan.

Mr.Joshi, learned AGP, on the other hand, submitted that, it is no doubt true that the incident in question is common and on facts, the case of Anwarkhan Akbarkhan is similar to the case of the petitioner. However, he stated that the petitioner has not approached this Court immediately and there is considerable delay in approaching this Court, and on the ground of delay, the petition may be dismissed.

However, the petitioner explained the delay by stating that he was under the impression that since he was approaching superannuation, he did not approach this Court earlier, and having come to know that some benefits are given to the said Anwarkhan Akbarkhan, ultimately, the petitioner has filed this petition.

7. Looking to the facts and circumstances of the case, especially considering the fact that the case of the petitioner is identical to the case of Anwarkhan Akbarkhan, it is not in the interest of justice to throw away the petition of the petitioner on the ground of delay. Considering the facts and circumstances of the case, therefore, I allow this petition, directing respondent No.3 to reconsider the impugned order of penalty imposed upon the petitioner and to specify the period during which the reduction to a lower stage in his time scale shall remain effective. While taking the decision, respondent No.3 is directed to take into consideration the order of penalty imposed upon the similarly situated employee, i.e. Anwarkhan Akbarkhan, and while passing the appropriate order, the order passed

in favour of the other employee may also be taken into consideration so that there may not be discrimination between two sets of employees on identical set of facts. The decision to that effect may be taken within a period of three months from the date of receipt of the writ from this Court. Since the petitioner has retired, whatever benefits are ultimately given to the petitioner are required to be adjusted while fixing his pension and other retirement dues. The Authority may accordingly pass order in this behalf.

Rule is accordingly made absolute to the aforesaid extent, with no order as to costs.

26th July, 2001 (P.B. Majmudar, J.)

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(apj)